



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TRG

Docket No: 7131-97
21 December 1999

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552
(b) DODINST 1332.38

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, the widow of a commissioned officer in the United States Marine Corps Reserve filed enclosure (1) with this Board requesting that her late husband's naval record be corrected to show that he transferred to the Retired Reserve prior to his death.
2. The Board, consisting of Mr. Flood, Mr. Cali and Mr. Pfeiffer, reviewed Petitioner's allegations of error and injustice on 14 December 1999 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.
3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:
 - a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.
 - b. Enclosure (1) was filed in a timely manner.
 - c. Subject enlisted in the Marine Corps Reserve on 12 August 1976. On 11 November 1977 he was commissioned a 2dLT in the Marine Corps Reserve. The record shows that he continued to serve in an excellent manner on active duty and in the Marine Corps Reserve for over 19 years and was promoted to MAJ (O-4) in due course. He died on 2 May 1996.
 - d. The Career Retirement Credit Report (CRCR) show that as of the date of his death he has been credited with 19 years, 8 months and 21 days of qualifying service. In his last anniversary year beginning on 12 August 1995, he was credited with 18 drills, 8 days of annual training and 11 membership

points for a total of 37 points.

e. Documentation submitted by Petitioner shows that her husband was first diagnosed with cancer in December 1992. On 13 December 1995 the cancer was considered to be terminal. As indicated, he died on 2 May 1996.

f. The "Temporary Special Retirement Qualification Authority" was enacted into law in 1992 and is codified at Title 10 U.S.C. 12731a. The law allows retirement of reservist with 15 years of qualifying service during the period 23 October 1992 to 1 October 1999. Subject completed 15 years of qualifying service for retirement on 11 August 1991. The law further states, in part, as follows:

.... the Secretary concerned may, consistent with the other provisions of this section, provide the notification (of eligibility for retired pay at age 60) to a member who no longer meets the qualifications for membership in the Selected Reserve solely because the member is unfit because of a physical disability

Reference (b) states, as it applies to Subject's case, that individuals who have over 15 years of qualifying service and are to be separated for physical disability shall be afforded the opportunity to elect either separation for physical disability or early qualification for retired pay at age 60 under Section 12731a of Title 10.

g. The Board is aware that Subject would have been given an opportunity to elect participation in the Reserve Component Survivor Benefit Plan (RCSBP) if he had been retired.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board notes that Petitioner only needed to live for an additional 3 months and 9 days and earn 13 additional retirement points to complete 20 years of qualifying service. Given the circumstances, the Board concludes that Petitioner should have been given an opportunity to request early retirement under the physical disability provisions of Title 10 U.S.C. 12731a and reference (b). Therefore, the record should be corrected to show that he transferred to the Retired Reserve with eligibility for retired pay at age 60 on 1 May 1996, the day before his death.

Since Subject understood his terminal condition, the Board also concludes that he would have made an election under the

provisions of the RCSBP designating his spouse as beneficiary with an immediate annuity based on the full amount of his retired pay.

The Board further concludes that this report of Proceedings should be filed in Subject's naval record so that all future reviewers will understand his status in the Retired Reserve.

RECOMMENDATION:

a. That Petitioner's Naval Record be corrected to show that he transferred to the Retired Reserve in the grade of Major on 1 May 1996 with eligibility for retired pay at age 60 under the provisions of Title 10 U.S.C. 12731a.

b. That Subject's Naval Record be further corrected to show that on 1 May 1996 he made an election for an immediate annuity for spouse only under the provisions of the RCSBP based on the full amount of his retired pay.

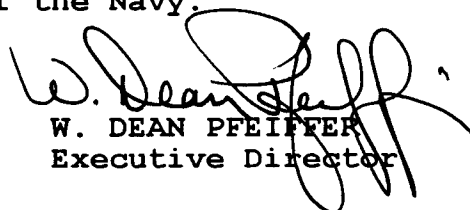
c. That this Report of Proceedings be filed in Subject's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director